

NOV 24 1997

DAC \$

#32

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
Inventor: LATHROP, et al.)
Patent No. 5,133,352)
Issued: 28 July 1992)
Serial No. 07/508,840)
Filed: 12 April 1990)
For: METHOD FOR TREATING HERPES SIMPLEX)

PETITION FOR RECONSIDERATION

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

The undersigned respectfully requests reconsideration of the Petition Under 37 CFR § 1.378(c) filed 4 June 1997 or, in the alternative, requests that this document be treated as a petition by the undersigned pursuant to the provisions of 37 CFR § 1.378(c) which states in part: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or...." Further, since 37 CFR § 1.366(a) states: "The patentee may pay maintenance fees and any necessary surcharges, or any person or organization may pay maintenance fees and any necessary surcharges on behalf of a

patentee. Authorization by the patentee need not be filed in the

11/25/1997 DFLOYD 00000023 5133352

01 FC:122 Patent and Trademark Office to pay maintenance fees and any

130.00

RECEIVED
DEC 11, 1997
OFFICE OF PETITIONS
AVC PATENTS
RECEIVED
DEC 03 1997
OFFICE OF PETITIONS
AVC PATENTS

necessary surcharges on behalf of the patentee" (emphasis supplied). It is respectfully urged that the undersigned and even the original petitioner, NexMed, Inc., qualify to pay the maintenance fee and its surcharge.

Additionally, the foregoing petition signed by Vivian Liu, Vice President, NexMed, Inc. clearly sets forth that NexMed, Inc. is an "...other party in interest." as set forth in 37 CFR § 1.378(d) even if objection is made regarding compliance with the proposed certificate under 37 CFR 3.73(b). Specifically, said petition clearly sets forth the chain of title from the patentees to Target Capitol, Inc., to BioElectric, Inc., to NexMed, Inc. In each of these instances, the name of the corporation was simply changed from Target Capitol, Inc., to that of BioElectric, Inc., to that of NexMed, Inc. NexMed, Inc., therefore, clearly falls within the meaning of the foregoing "...other party in interest."

Therefore, since any organization may pay maintenance fees and any necessary surcharges on behalf of a patentee as set forth in 37 CFR § 1.366(a), it is respectfully urged that this same right should extend to a petitioner submitting a petition stating that the delay in paying the maintenance fee and the surcharge was unintentional.

In the alternative, the undersigned hereby petitions under 37 CFR § 1.378(c) to accept an unintentionally delayed payment of a maintenance fee for the above-identified patent.

The first named inventor, Peter H. Lathrop, is believed to currently have a postal address and a place of residence at 4638

Terraza Circle, San Diego, California 92124, which is a different address from that of record. Further, upon information and belief said patentee has had a postal address and a place of residence at another location in San Diego as well as another place of residence in Salt Lake City, Utah, all of which addresses and places of residence were subsequent to the address of record. It is unknown whether said patentee has filed an appropriate change of address notice with the United States Patent and Trademark Office so that it is highly improbable that any Maintenance Fee Reminder notice would have been received by said patentee.

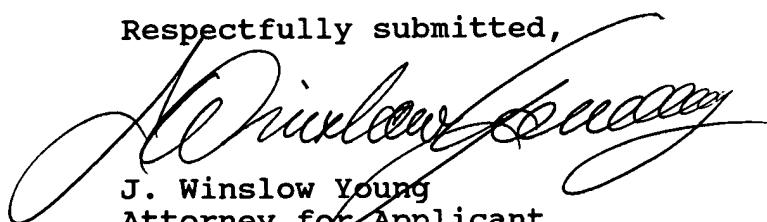
In summary, all right, title, and interest in and to said patent had been assigned to Target Capital, Inc. And, as stated in the foregoing petition, the payment of the maintenance fee was unintentionally delayed due to the press of reorganizing the corporate structure and raising the necessary capital to enable the company to continue to develop the product covered by the patent.

In view of the foregoing reconsideration of the subject petition is hereby respectfully requested and that the previously submitted payment for the subject maintenance fee be accepted as an unintentionally delayed payment in the matter of the above-identified patent.

The required fee for this Petition under 37 CFR 1.17(h) in the amount of \$130.00 is enclosed herewith in the form of Official Check No. 61-651002426.

In the event additional fees are required, please notify the undersigned and said fees shall be promptly paid.

Respectfully submitted,



J. Winslow Young
Attorney for Applicant
Registration No. 25948

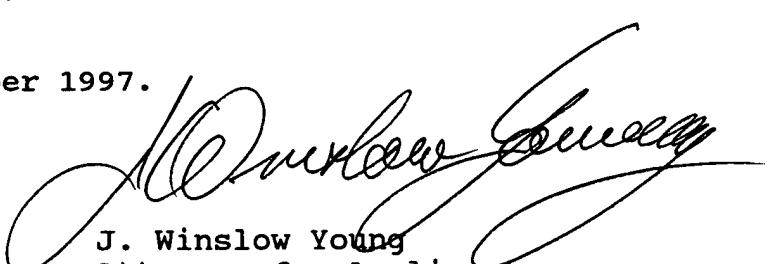
P.O. Box 1088
Centerville, Utah 84014-5088
Telephone: (801) 292-1248
Facsimile: (801) 292-3484

CERTIFICATE OF MAILING

I hereby certify that this PETITION FOR RECONSIDERATION for Patent Number 5,133,352 issued 28 July 1992 in the name of LATHROP et al. for METHOD FOR TREATING HERPES SIMPLEX together with Official Check No. 61-651002426 in the amount of \$130.00 are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

Dated this 20th day of November 1997.



J. Winslow Young
Attorney for Applicant
Registration No. 25948

P.O. Box 1088
Centerville, Utah 84014-5088
Telephone: (801) 292-1248
Facsimile: (801) 292-3484

JWY:my
Docket No. 395